

STATE OF MAINE

KENNEBEC, SS.

Board of Overseers of the Bar
Grievance Commission
File Nos. 92-S-301 and
92-S-302

BOARD OF OVERSEERS OF THE BAR,)
)
Petitioner,)
)
vs.)
)
RALPH W. BROWN, of Portland, Maine,)
)
Respondent.)
_____)

**REPORT OF FINDINGS
AND CONCLUSIONS OF
PANEL D OF THE
GRIEVANCE COMMISSION**

I. PROCEDURAL HISTORY:

On October 16, 1995, pursuant to due notice, Panel D of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7(e)(2), to determine whether grounds existed for the issuance of a reprimand or whether probable cause existed for the filing of an information with respect to alleged misconduct of Respondent Ralph W. Brown as described in the Petition dated March 6, 1995, filed by Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by Assistant Counsel Geoffrey S. Welsh, and Respondent Ralph W. Brown was represented by Francis M. Jackson, Esq. An answer had been duly filed on behalf of Respondent.

Bar Counsel and counsel for Respondent agreed without objection to the admission of exhibits 1 through 24 including exhibits 23A, 24A, 24B and 24C. Three witnesses were sworn and presented testimony before the Panel.

II. FINDINGS OF FACT:

1. Ralph W. Brown, Esq. (Respondent) of Portland, County of Cumberland, State of Maine, at all relevant times hereto, has been an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

2. In February, 1983, Alice L. Dugan retained Seymour Nathanson, Esq. to bring suit against an insulation contractor for work performed in October, 1981.

3. A contingent fee agreement was signed between Ms. Dugan and Attorney Nathanson.

4. Mr. Nathanson was contemplating retirement and for a period of time associated himself with Respondent with respect to Ms. Dugan's case. Mr. Nathanson turned responsibility for the file over to Respondent in July, 1987. At no time did Respondent obtain a new written contingent fee agreement from Ms. Dugan.

5. Ms. Dugan's claims and causes of action against the contractor were subject to a six-year statute of limitations.

6. A copy of the applicable contract reflecting a date of 1982 was in Mr. Nathanson's file. However, Ms. Dugan advised Respondent that the work was actually performed in November, 1981.

7. Also contained in Mr. Nathanson's file were three documents from insurance companies clearly indicating that the date of loss was October, 1981.

8. Respondent did not institute suit against the contractor until shortly after the statute of limitations had run. The Complaint was dismissed by the Superior Court and the dismissal was upheld by the Maine Supreme Judicial Court on the basis that the Complaint was filed after the statute of limitations had run.

9. Ms. Dugan, through counsel, then instituted suit against Respondent for indemnification and Respondent answered the Complaint pro se.

10. During the course of the litigation against him by Ms. Dugan, Respondent failed to respond to discovery requests or to comply with discovery orders issued by the Superior Court.

11. Ms. Dugan's attorney attempted to serve a motion for summary judgment on Respondent for approximately a month commencing June 21, 1991. However, Respondent was then experiencing severe financial and marital pressures and was denied access to his office.

12. After the motion for summary judgment was granted, Respondent filed a motion to alter or amend judgment or for relief from judgment and which motion was supported by Respondent's Affidavit.

13. Although the Board has characterized Respondent's Affidavit as incomplete and misleading, it is found that it was essentially accurate.

GREENSTREET MATTER

14. Respondent was sued by Mr. Greenstreet on May 14, 1990. At the same time Mr. Greenstreet moved for an attachment against Respondent.

15. Respondent answered the Complaint pro se but did not respond to the motion for attachment.

16. Respondent received a motion list from the Court providing him with notice that the Court would hear the motion for attachment on August 8, 1990.

17. On or about August 7, 1990, Respondent transferred by warranty deed all of his interest in certain real property located in Portland, County of Cumberland, State of Maine to his wife.

18. Respondent recorded the deed to his wife on August 8, 1990, and on that same date the Court granted Greenstreet's motion and entered an order authorizing attachment and trustee process against Respondent's property.

19. The order of the Superior Court authorizing the attachment and trustee process was also recorded on August 8, 1990, in the Cumberland County Registry of Deeds but subsequent to the recording of the deed from Respondent to this wife.

20. On August 7, 1990, Respondent was under severe financial pressure and a second mortgage on his residence had been foreclosed.

21. Respondent has previously been reprimanded for a violation of a Maine Bar Rule.

III. CONCLUSIONS:

Based upon the following findings of fact, the Panel concludes as follows:

1. Mr. Nathanson's continued involvement with Ms. Dugan's case relieve Respondent from any obligation to obtain a new contingent fee agreement from Ms. Dugan. Therefore Respondent's failure to obtain a new written contingent fee agreement does not constitute a violation of the Maine Bar Rules.

2. Respondent's affidavit in support of his motion to alter or amend judgment was essentially correct and therefore his actions with respect to that affidavit do not constitute a violation of the Maine Bar Rules.

3. Although Respondent was severely stressed because of the demands of his practice, marital issues, and financial problems, the transfer of his interest in his

residence to his wife was prompted, in no small measure, by an intent to defraud creditors. Respondent's actions constitute a violation of Maine Bar Rule 3.2(f)(3).


4. Respondent failed to fully review Ms. Dugan's file when full responsibility was turned over to him by Mr. Nathanson and, as a consequence, he missed the applicable statute of limitations. This constitutes a violation of Maine Bar Rule 3.6(a).


IV. DISPOSITION:

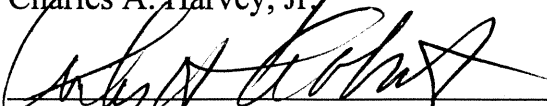
Based upon the findings of fact and the conclusions set forth above, Respondent is hereby reprimanded for violation of Maine Bar Rule 3.2(f)(3) and Maine Bar Rule 3.6(a).

Dated: October 23, 1995

PANEL D OF THE GRIEVANCE
COMMISSION


Celeste Branham


Charles A. Harvey, Jr.


Charles H. Abbott

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